EXHIBIT 5
DATE 1/18/07
HB 189

House Bill 189

Testimony before House Appropriation Committee

Rich Moy, Chair, Flathead Basin Commission
(Administratively attached to DNRC)
January 18, 2007

A Bill FOR AN ACT ENTITLED: " AN ACT PROVIDING AN APPROPRIATION TO THE FLATHEAD BASIN COMMISSION TO ASSESS IMPACTS OF PROPOSED COAL MINES IN BRITISH COLUMBIA, CANADA, BY CREATING A WATER QUALITY MONTORING PROGRAM AND ESTABISHING BASELINE WATER QUALITY DATA FOR THE FLATHEAD RIVER; AND PROVDIING AN EFFECTIVE DATE.'

Background

The Flathead Basin Commission was established in 1983 by the Montana Legislature, and given the statutory mandate "to protect the existing high quality of the Flathead Lake aquatic environment; the waters that flow into, out of, or are tributary to the lake; and the natural resources and environment of the Flathead Basin."

Cline Corporation, a Canadian mining company with Japanese and German financing, has proposed the Lodgepole mine that would extract 2 million tons of low grade metallurgic coal annually for 20 years. This coal would be mixed with a higher grade coal and shipped to China for steel production. Cline has commenced the Environmental Assessment (EA) process required by British Columbia for all mining applicants. However, this EA process is very limited in its ability to identify potential impacts, as indicated by the fact that British Columbia has never denied a coal mine application.

The proposed mine is designed to remove McLatchie Ridge and the upper portions of Foisey Creek, a tributary of the North Fork of the Flathead River. The mine would have significant impacts on water quality, the westslope cutthroat and bull trout fishery, and wildlife. These impacts would be felt across the border in Glacier National Park, the North Fork of the Flathead drainage and in Flathead Lake. If this mine is built, there is a strong likelihood that Cline would develop its Sage Creek and Cabin Creek coal leases, located a mere 3 miles north of the Montana border, when the moratorium for these leases expires in 8 years. Further, the Lillyburt site which is located directly under the upper Flathead River and its riparian corridor is presently undergoing exploratory drilling.

Virtually no water quality and other types of riverine data for the B.C. Flathead currently exist. As part of the negotiation process for the B.C./Montana MOU, the State and the Province are considering a joint water quality monitoring program. This program is critically needed to identify baseline conditions and mitigation measures. It is difficult to mitigate impacts when you cannot predict impacts; and you cannot predict impacts without baseline data. For example, we learned from a Canadian scientist last fall that nitrites/nitrites concentrations are 650 times higher in Michelle Creek (located downstream of the Coal Mountain mine in the Elk Valley and in the same geologic formation as the proposed Cline mine) than in the Flathead River. We also learned that selenium concentrations are 57 times higher in Michelle Creek (13.2 mg/l) than in the

Flathead River. Similar types of selenium concentrations in Montana would violate DEQ's chronic aquatic life standard of 5mg/l by over 250 percent. Clearly, if the proposed mine is approved, we can expect similar types of water degradation on our side of the border, but without baseline data, we cannot predict impacts with certainty. Finally, we also learned that critical bull trout spawning redds are located directly downstream of the proposed mine, and the destruction of this habitat would have a significant adverse impact on the Flathead Lake fishery.

After three years of extensive investigations by a bi-national team of 60 scientists in the mid-1980s, the International Joint Commission (IJC), comprised of three persons appointed by the President of the United States and three persons appointed by the Prime Minister of Canada, unanimously denied the Sage Creek coal mine based on the impacts to Glacier National Park, Flathead Lake, and Montana. The IJC cited the need for baseline data and after 25 years, the information still has not been collected.

What HB 189 Does

The bill would appropriate $308,477 for the biennium for three activities:

(1) Water Monitoring: ($183,477). Monitor water quality and continuous flow for two years at 8 sites related to the proposed Lodgepole coal mine in B.C. Total cost estimates for monitoring for the biennium would be $565,050 of which Montana and B.C. would both pay $183,477. The U.S. Geological Survey would provide a 1:1 match or payment of $198,096 for those stations for which it has responsibility.

(2) Operational Budget: ($25,000). Ensure that adequate travel and other operational funds are in place so that Montana can fully participate in the Canadian environmental assessment process for coal mine applications and the finalization and implementation of the BC/MT Action Plan ; and

(3) Tranboundary Specialist: ($100,000). Hire a Hydrologist/Coordinator full time for the biennium to cover salary, benefits and operational costs. This person would collect and analyze data and coordinate the functions of Montana's involvement in the B.C. regulatory process and the implementation of the BC/MT Action Plan.

TOTAL BIENNIAL BUDGET REQUEST:		
Water quality monitoring (estimate):		$183,477
USGS	$110,000	
Flathead Lake Biological Station	$ 64,500	
DNRC	$ 7,500	
Travel:		$ 25,000
Transboundary Specialist:		$100,000
Total		**$308,477**

Amendment

The Department and FBC would like to amend the bill to make it effective immediately.

Conclusion

The Flathead Basin Commission and DNRC support HB 189.